

The Bill Blackwood Law Enforcement Management Institute of Texas

**Capital Punishment:
Life or Death**

**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

**By
Dennis Rice**

**Randall County Sheriff's Office
Canyon, Texas
May 2015**

ABSTRACT

The purpose of this research is to take an in-depth look at the death penalty. The methods utilized for capital punishment will be examined. Consideration of the heinousness of crimes, multiple felonies, terrorism, along with plea bargains and legal safety issues, will all be discussed. The racial aspects and whether the death penalty is a deterrent will all be debated. Each of the above will be weighed to determine the benefit of utilizing the death penalty as a form of punishment.

Resources that were accessed for this research paper range from articles, code books, legal dictionary, and internet sites. By examining the information gathered from the resources, the results will illustrate that the death penalty is an appropriate punishment in violent crimes. There can be no doubt that the offender will not commit a crime again. As racial issues are explained, it is clear that the death penalty is used appropriately regarding racial populations. The death penalty is not a form of cruel and unusual punishment for violent crimes. When considering the actions of a person, there are times when a person who has committed a violent crime should be subjected to capital punishment and forfeit his/her right to live.

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	3
Counter Position	6
Recommendation	13
References	15

INTRODUCTION

Whether to use death as a punishment is a question that has been debated for many years. Capital punishment has been employed dating back to the eighteenth century ("History," 2001, p. 1). Numerous debates on the subject generally focus on both legal and moral issues, such as whether having the death penalty deters crime, and whether or not it is racially unbiased. Through the years, some governments have legalized capital punishment, while others have ruled it a cruel and unusual form of punishment. There are definitely differing sides, and both sides have valid points. The debate of capital punishment ranges from morality, legal issues, and racial sensitivity. These issues will be examined each of the above will be weighed to determine the benefit of utilizing the death penalty as a form of punishment.

The term "capital punishment" must be clearly defined. Capital punishment is basically the death penalty, which is used as punishment for crimes that the government defines as capital crimes. Black's Law Dictionary defines the death penalty as "the supreme penalty exacted as punishment for murder and other capital crimes; held not to be, under all circumstances, cruel and unusual punishment within prohibitions of the Eighth and Fourteenth Amendments, United States Constitution" (p. 360). The problem lies with the definition of cruel and unusual punishment as it pertains to the Eighth Amendment; however, there is no universal definition. The closest definition found is, "Punishment that is torturous, degrading, inhuman, grossly disproportionate to the crime in question, or otherwise shocking to the moral sense of the community" (Garner, 2004, p. 1269). In 2008, in the United States

Supreme Court case *Baze v. Rees* (2008), Chief Justice John Roberts stated, “to constitute cruel and unusual punishment, an execution method must present a substantial or objectively intolerable risk of serious harm” (p. 2). Without a specific definition of cruel and unusual punishment, the debate over the death penalty heats up even more. Proponents and opponents tend to come up with their own opinions on the meaning behind this legal phrase. With capital punishment hinging on the definition of cruel and unusual punishment, the argument over the issue of the death penalty continues.

Deterrence is a significant issue which is deliberated by both sides of the capital punishment debate. Because ignorance and emotion play more of a role in the commission of a crime, most individuals do not even know what crimes are eligible for the death penalty; therefore, the perpetrator does not know which crimes are being deterred. There is a broad variety of offenses of homicide, some of which are eligible for the death penalty. There are other homicides for which punishment would not include the death penalty, such as manslaughter. The State of Texas has passed another option for punishment of capital crimes: life in prison without parole. The topic of deterrence is a noteworthy concern that should be discussed when debating the death penalty.

At this time, the federal government, United States military, and 35 states deem capital punishment as legal. The death penalty was reinstated in the United States in 1976-1977, following the Supreme Court cases in *Gregg v. Georgia* (1976), *Jurek v. Texas* (1976), and *Proffitt v. Florida* (1976) (“History,” 2001, p. 6), collectively referred to as the Gregg Decision. Capital punishment had been suspended due to the issue of the arbitrariness of the death penalty,

which was brought before the Supreme Court in 1972 in *Furman v. Georgia* (1972). Since the death penalty was reinstated in 1977 through 2010, there have been 1,234 executions. Statistics as of December 31, 2011, showed that there were “3,082 inmates” in the United States on death row (Snell, 2013, p. 1). As of October 10, 2013, there are 274 inmates on death row in the State of Texas (TDCJ, n.d.). Individual jurisdictions use different methods for carrying out the death penalty. The federal government may employ whatever method the state in which the federal prison is located uses. These methods include hanging, firing squad, electrocution, gas chamber, and lethal injection. Each of the 35 states that utilizes the death penalty as a method of capital punishment currently uses the method of lethal injections. A few of the states have options available to the criminal to opt for another method.

The positive and negative aspects of capital punishment have been scrutinized from Babylonian times and continue to be through the present day. The issue is debated during political elections and brought before the Supreme Court on a regular basis. The results of the research will show that the criminal justice system should utilize capital punishment as a punishment method for cases involving violent criminals in acts of mass murders, serial murders, and terrorism.

POSITION

The death penalty should be used in capital cases where society believes the criminal is a continuing threat toward society and the punishment is justified. Capital punishment is not a form of cruel and unusual punishment; all jurisdictions in the United States authorizing the death penalty as a form of punishment are now using the method

of lethal injection. With this method, an inmate is given a drug to put him to sleep, comparable to a patient having surgery. The difference, of course, is the criminal will not wake up. There are different societies in the world; there are agreements within each society that define the rights within their culture known as a social contract. When a criminal violates the social contract of humanity, capital punishment should be utilized with these most serious cases of murders.

Prosecutors should have the tool of a death penalty for heinous criminals who do not show respect for human life. Some believe, “murderers have committed the most serious offense imaginable; they deserve to be treated in the most severe manner” (Mandery, 2005, p. 5). Serial killers, mass murders, baby killers, and individuals, who commit acts of treason, including terrorism, should all be eligible for capital punishment. These violent crimes are committed by the worst of criminals. A murderer, who commits these acts against society, having taken lives from the communities, deserves the ultimate penalty of death. The criminal who has no respect for the value of a human life, and who will continue to be a continued threat to society, must be executed.

The United States Department of Justice lists the issues that should be considered when utilizing the death penalty, “the defendant intended or had a high degree of culpability with respect to the death of the victim” (U.S. Department of Justice, 2000, p. 3) is one of the factors that a prosecutor must examine. Culpability is an important issue in deciding the use of the death penalty in each individual case. Culpability should be investigated to determine whether the murder was planned out, and/or did the murderer intend to kill the victim. The prosecutor should have comprehensive knowledge to identify the legalities and the specific crime before making the decision to recommend the use capital punishment. As a prosecutor evaluates the

appropriate punishment for a capital murder, he/she should be able to substantiate the criminal is an ongoing threat to society. The investigation should show there is a recognizable culpability with the killings. The crime cannot be merely the individual was reckless in his/her action, but rather the individual intended to kill the victims. The heinousness of the crimes should justify the use of the death penalty.

Some of the most atrocious criminals are those that kill an innocent baby or child. Those victims are so innocent that they cannot even defend themselves, yet they are attacked by a brutal individual. If the criminal has no respect for the life that he/she is willing to destroy, there should be the option of a punishment as severe as the death penalty. The punishment needs to be reflective of the crime. The value of a baby's life is immeasurable. The world will never know how this human being might have contributed to society. There are very few crimes as destructive as murdering a child; therefore, the death penalty would be just. The state of Texas has statutes in place deeming that, if a person murders a child under the age of 10, the criminal is eligible for the death penalty (Texas Penal Code, 2012). The statute was passed by the Texas Legislature, just as the Federal statute on murder was passed by the U.S. Congress. The elected representatives who pass legislation on behalf of the public illustrate that a majority of the public has some support for the death penalty in these types of cases.

Terrorism used to be an act that was thought to occur only on foreign soil. On April 19, 1995, that changed. Timothy McVeigh and Terry Nichols devised a plan for mass killings through terrorism. There were 168 innocent lives taken, including 19 children. Then on September 11, 2001, Usama (Osama) bin Laden orchestrated the murder of 2,996 individuals, including 405 emergency responders. The Federal government established the National Commission on Terrorist Attacks Upon the United

States the committee reported “The death toll surpassed that of Pearl Harbor, in December 1941” (“The 9/11 Commission Report,” 2004, p. 1). After Pearl Harbor, the United States government declared war. The people of the U.S. were willing to go to war knowing that there would be some of those fighting for the U.S. who would die fighting, and some of the soldiers would kill others to defend the U.S.A. The death penalty allows the government to defend the public against violent killers. There must be an avenue to handle criminals who are so violent that they let their personal and political agenda override what is accepted as morally right.

COUNTER POSITION

The opposition would lead society to believe that the cost of capital punishment outweighs placing the criminal in prison for life without parole. There are direct costs and indirect costs to society involved with capital punishment. A direct cost to the taxpaying society would be the legal costs, such as attorneys and the court system. There is a strain on the criminal justice system with a backlog in the appellate process. The numerous appeals that the defendant peruses in capital cases both in state and federal courts increases the gridlock in the appellate courts when other cases need to be heard. This continued appellate process adds to the expense through the costs of attorneys, judges, clerks, law enforcement, and other personnel involved to resolve this legal process. This lengthy and costly process is a method the opposition uses to defend their resistance to the death penalty.

An indirect cost associated with capital punishment is the long-term changes to society as a whole. The world as it was known was changed dramatically after September 11, 2001. There are multiple areas of societies’ lives that have been impacted by the catastrophic damage from the terrorist attacks on the United States.

This act of extremism caused a panic to this nation, the likes of which had never been seen before. Virtually all of the American public has been affected by this incident. If a member of society was not affected by the actual incident they have been affected by the aftermath. This one incident of terrorism placed astronomical financial costs on the American public when considering the United States' response after the attacks. The federal government formed a new department of bureaucracy to deal with the safety and security of the country, known as the Department of Homeland Security. In 2012, the United States government budgeted \$56,941,507 (U.S. Department of Homeland Security, 2012); that is almost \$60 million in tax dollars for an agency that was not in existence prior to 2001, representing a large impact on the American society. The level of security now in place when citizens travel through the country has increased the stress level of the American population.

By examining the indirect and direct financial issues, not just the selected few cost issues discussed by the opposition, there can be merit found in respect to the death penalty. There are direct impacts that may affect the few, but the indirect costs connected to capital murder illustrate the effect on all citizens. If all factors are thoroughly evaluated, a conclusion can be proven that there are crimes where it is cost-effective to utilize the death penalty.

The death penalty is a deterrent to criminals from committing additional murders. The first issue that needs to be addressed is to define who is being deterred. Deterrence should be for both the convicted murderer being eliminated with the death sentence and other potential criminals being discouraged from the commission of the act. When a convicted murderer is sentenced to death, the jury believes that the criminal is a danger to society and may kill again. Society can be defined as humanity

as a whole, including even inside the walls of a prison. There are innocent prison guards, civilians, and others who work inside prisons. There are other inmates that could be in danger if the violent criminal is not sentenced to death. The longer the killer is alive, the greater the opportunity for the murderer to kill again. In the end, once the execution is carried out, there is no doubt the convicted murderer will not kill again.

The death penalty can be a deterrent before someone commits a capital offense with life imprisonment as an alternative. Imprisonment for even a short period of time would be devastating to most of the general public, while others who know prison as their second home know no difference; prison is the life they know. There are those who are so evil the only alternative is the death penalty. Bohm (2008) stated "At the present time, capital punishment is utilized far too infrequently to provide a strong deterrent to homicide. But on the basis of my own research on capital punishment, I believe there is a statistically perceivable deterrent effect" (p. 129).

Opponents dispute deterrence as a significant factor to debate the effectiveness of capital punishment. Their stance is there is no evidence the death penalty deters crime; "most murderers are not rational people that think out their actions" (Bohm, 2008, p. 126). The opponents maintain the deterrence of the punishment is unable to be proven since there is no way to tabulate the evidence of how many criminals were deterred by the punishment.

The United States Supreme Court ruled the death penalty was unconstitutional in 1972. All of the convicted murderers that were on death row at the time of this court decision had their sentences commuted to life in prison. Some of these criminals would eventually be eligible for parole and be released back into society. This was a court ruling that would eventually cost the lives of innocent citizens. An example was

Kenneth Allen McDuff. McDuff was convicted of the murder of three teenagers and burglary, and was sentenced to death in 1968 (Graczyk, 1998, p. 1). After the U.S. Supreme Court decision of *Furman v. Georgia* (1972), McDuff's death sentence was commuted to life, therefore making him eligible for parole and possible release. Twenty-one years after McDuff committed the triple murder of the three juveniles; he was paroled out and set free (Cartwright, 1992). McDuff went on a rampage and began killing again and was convicted again for two murders, one in 1991 and one in 1992. McDuff was sentenced to death and eventually executed in 1998 (Graczyk, 1998, p. 1).

If the death penalty had not been ruled unconstitutional in 1972, along with this court ruling allowing McDuff to become eligible for parole and eventually paroled back into society, this dangerous criminal would have been executed. Now there are two more families who have lost loved ones to this monster. The use of life in prison without parole is now an option for punishment in capital cases in Texas. This was a law change that went into effect on September 1, 2005 (Texas Penal Code, 2012). Just like the death penalty, life in prison without parole is here today, but, depending on legislatures and the state and federal courts, could be gone tomorrow. That would allow the criminal to possibly be released on parole, just as McDuff was released. It is not worth the chance.

McDuff's parole cannot be blamed solely on the Supreme Court's death penalty ruling. Due in partial response to overcrowding the prison system supported McDuff's release. The ultimate decision to release McDuff was rendered by the parole board.

Race has been and will always be a huge issue in the capital punishment debate. The common belief is blacks and non-whites are the largest groups of inmates on death row who have been executed. However, that is far from the truth. Current statistics on

the death penalty since 1976 show that over 56% of those executed are white, while 36% were black, and 7% were Latinos. What is also interesting is the fact that when a capital crime is committed and a person is executed, 77% of the time the victim of the crime was white, while 15% of the time the victim was black, and 6% were Latinos ("National statistics," 2013, p. 1). Williams (2000) stated that "These statistics are simply the beginning of a chain that is not generally reported by the media, and so is not known by the public" (p. 60). This issue must be evaluated in context with that of relating the race of the criminal to his own individual criminal record at the time of the capital offense. Race alone cannot be the deciding factor in the capital punishment debate the totality of all factors needs to be discussed.

A federally funded research report titled "Race and the Decision to See the Death Penalty in Federal Cases" (Klein, Berk, & Hickman, 2006, p. xvii) was submitted to the U.S. Department of Justice in June 2006. This report researched the issue of bias in (*Baze v. Rees*, 2008) death penalty cases in relation to race of the suspect. The result of the study "found that controlling for case characteristics eliminated race effects." The race of the defendant cannot be judged alone. The totality of each situation must be evaluated, not just the race of the suspect. This study addressed "aggravating and mitigating factors" (Klein, Berk, & Hickman, 2006, p. xvii) in connection with the criminal case. This information further illustrated that the race of a suspect cannot be examined alone, but the specific facts of the case, along with the suspect's criminal history, were to be considered.

The results of the 2010 census conducted by the United States Department of Commerce show that 72.4% of Americans are white, 12.6% are black, and overall 16.3% of the population is Hispanic (U.S. Department of Commerce, 2010, p. 4). These

numbers are similar in nature to the statistics of victims, with little difference for the defendants of capital cases. A study of death sentences in Maryland from 1978-1999 showed there was racial and jurisdictional bias, but the research stated the “study did not consider the numerous characteristics about a homicide (the number of aggravating factors, the criminal history of the defendant, etc.) which may possibly explain any apparent racial or geographic disparity” (Brame & Paternoster, 2003, p. 4). The main issue of the race argument is that there is a larger percentage of black death row inmates wherein a victim was white than when a victim was black. Overall, the statistics tend to prove the death penalty is used equally throughout the different races. The media tends to over-sensitize the public to any type of crime, but especially murder when the murder is committed by a race other than the victim’s. Two high profile cases involving interracial murders were in Jasper, Texas, in which a group of white men dragged and killed a black man, and in Los Angeles, California, where O.J. Simpson allegedly killed two white people. Even though one of these cases dealt with a celebrity, the media over-sensitized the issues to outrage the public by making race a central issue. Specifically in the Simpson case, race was not an issue for the murder, but rather domestic relations. If the killer was of the same race in either of these cases, or any other interracial murder case, the murder would not have been as publicized as it was in these interracial murders.

At no time should there be a chance for an innocent person to be executed. Laws and procedures must be in place to keep this from occurring. Two items have been put in place: the use of Deoxyribonucleic acid (DNA) and the automatic appeal process. The evolution of technology and DNA has helped to prevent the executions of numerous individuals who might not have been guilty of the crime. While it is true that

there are individuals who have been exonerated from death row it is documented that, “nobody who was demonstrably innocent has been executed” (Marzilli, 2003, p. 69).

The exact number of how many people have been exonerated because of their innocence is not known, since some of the individuals might have committed the offense, but DNA raised a question. The federal government, along with Texas and other states, gives convicted murderers an automatic appeal after the trial. The State of Texas has a statute in place that addresses the defendant’s right to an automatic appeal, “the judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals” (“Procedure,” 2009). This is in place to protect the individual and to verify that he/she has had a fair trial.

Cost is a major factor in capital cases, and some jurisdictions do not have the funds to pay for a death penalty trial which may ultimately result in numerous expert witnesses and after a conviction an endless amount of costly appeals. The prosecutor must always weigh the cost involved in each capital case in which a murderer could be paroled, versus the budget constraints of a county; “prosecutors in smaller rural counties are generally willing to offer pleas because of budgetary considerations, especially when they are dealing with an experienced defense attorney” (White, 2006, P. 148). Prosecutors need the option to have the death penalty as a form of punishment in murder cases. A method that can be utilized as a cost savings to the tax payers is the plea bargain. Plea bargains have become a way of life and are in place to save money and time. Plea bargains can be used during murder cases when the prosecutor has “a fear that the defendant might be found not guilty; an effort to shield a young or traumatized witness from having to testify in court; or a desire to avoid the time and expense of a trial” (Marzilli, 2003, p. 22). Prosecutors must always keep in mind

that they are responsible to the taxpayers of the community and should use the legal resources available to stretch the tax dollar.

RECOMMENDATION

The importance of this issue is safety. The public and the law enforcement officers who must deal with these criminals on a daily basis deserve the right to be safe. There are those who will state this is a human rights issue, and they are partially right. Their view is generally from that of the criminal, the truth is the human rights issue should be about a safe and secure society.

The death penalty needs to be an available option for prosecutors as a method of punishment. Not every convicted murderer should be sentenced to death. However, the death penalty needs to be an option when the offender has committed mass murders, serial murders, the killing of a child, and acts of treason that would include terrorism. By allowing capital punishment, the criminal justice system has a punishment to address each type of murder case on its merits.

The question of capital punishment is not unlike the abortion issue. Those who are for it will always be for it and show statistics that prove their side. Those individuals who are against the death penalty will always be against it and be able to produce information to defend their position. There are those individuals taking the middle ground who could sway the opinion scales. These individuals could be undecided or feel mixed emotions about the method or specific crime for which the death penalty should be used.

The death penalty is an acceptable form of punishment in appropriate cases. The racial issues that the opponents bring up are not totally true, and the facts show those executed are representative of the population. By executing the violent killer,

there is a guarantee the criminal will never kill again. That alone is a deterrent. The death penalty has been brought before the United States Supreme Court on numerous occasions. The United States Supreme Court has consistently ruled the death penalty is not a form of cruel and unusual punishment today. There must be a method to impact these heinous killers who violate the social contract. Capital punishment is another tool in the criminal justice toolbox. Not all criminals are nails that require hammers; there are those that are screws that require a screwdriver. While recognizing that capital punishment is a harsh means of responding to violent crimes, the death penalty should be used on the most heinous of criminals.

REFERENCES

- Baze v. Rees, 217 S.W. 3d 207 (2008).
- Bohm, R. M. (2008). *The death penalty today*. Boca Raton, FL: Taylor & Francis Group.
- Brame, R. & Paternoster, R. (2003). *An empirical analysis of Maryland's death sentencing system with respect to the influence of race and legal jurisdiction*. College Park, MD: University of Maryland.
- Cartwright, G. (1992, August). Free to kill. *Texas Monthly*. Retrieved from <http://www.texasmonthly.com/story/free-kill>
- Death penalty. (1979). *Black's law dictionary* (5th ed.). St. Paul, MN: West Publishing.
- Furman v. Georgia, 408 U.S. 238 (1972).
- Garner, B. A. (2004). *Black's law dictionary* (8th ed.). St. Paul, MN: West Publishing.
- Graczyk, M. (1998, November 18). Infamous Texas killer put to death. *Abilene Reporter-News*. Retrieved from <http://www.texnews.com/1998/texas/mcd1118.html>
- History of the death penalty. (2001). Retrieved from <http://deathpenaltycurriculum.org/teacher/c/about/history/history-6.htm>
- Klein, S. P., Berk, R. A., & Hickman, L. J. (2006). *Race and the decision to seek the death penalty in federal cases*. Arlington: RAND Corporation.
- Lehman, E. S. (2005). *West's encyclopedia of American law* (2nd ed., Vol. 3). Detroit: Gale Cengage Learning.
- Mandery, E. J. (2005). *Capital punishment*. Sudbury, MA: Jones and Bartlett.
- Marzilli, A. (2003). *Capital punishment*. Philadelphia, PA: Chelsea House.
- National Statistics on the Death Penalty and Race. (2013). Retrieved from <http://www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976#defend>

Procedure in capital case for offense committed before September 1, 1991. (2009).

Texas Code of Criminal Procedure. Retrieved from

<http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.37.htm#37.0711>

Snell, T. L. (2013, July 16). Capital punishment - 2011 statistical tables. Retrieved from

<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4697>

Texas Department of Criminal Justice. (n.d.). Death row facts. Retrieved from

https://www.tdcj.state.tx.us/death_row/dr_offenders_on_dr.html

Texas Penal Code. (2012). Retrieved from

<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.19.htm#19.033>

The 9/11 Commission Report. (2004, August 21). Retrieved from

http://govinfo.library.unt.edu/911/report/911Report_Exec.htm

U.S. Department of Commerce, U.S. Census Bureau. (2011, March). Overview of race and Hispanic origin: 2010. Retrieved from

<http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>

U.S. Department of Homeland Security. (2011, January 27). FY 2012 budget-in-brief.

Retrieved from <http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf>

U.S. Department of Justice. (2000, September 1). The Federal death penalty system.

Retrieved from

<http://www.justice.gov/dag/pubdoc/deathpenaltystudy.htm#feddeathpenaltylaw>

White, W. S. (2006). *Litigating in the shadow of death*. Ann Arbor, MI: University of Michigan Press.

Williams, M. E. (2000). *Capital punishment*. San Diego, CA: Greenhaven Press.